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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ALAN SCOTT ANDRE,

14 Defendant.

CASE NO. CR17-0315JLR

ORDER DENYING MOTION TO
WITHDRAW GUILTY PLEA

15 Before the court is Defendant Alan Scott Andre's motion to withdraw his guilty
16 plea. (Mot. (Dkt. # 42).) Plaintiff United States of America opposes the motion. (Resp.
17 (Dkt. # 43).) The court has reviewed the motion, the parties' submissions concerning the
18 motion, the relevant portions of the record, and the applicable law. Being fully advised,¹
19 the court DENIES the motion.

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21 ¹ Mr. Andre requests oral argument on the motion. (*See* Mot. at 1.) However, the court
22 finds that oral argument would not be of assistance in deciding the motion because the parties
thoroughly briefed the legal issues involved. (*See id.*; Resp.); *see also* Local Rules W.D. Wash.
LCrR 12(b)(9).

1 “A defendant may withdraw a plea of guilty . . . after the court accepts the plea,
2 but before it imposes sentence if . . . the defendant can show a fair and just reason for
3 requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2)(B). The defendant carries the
4 burden to show a fair and just reason for withdrawal. *United States v. Nostratis*, 321 F.3d
5 1206, 1208 (9th Cir. 2003). “[T]he decision to allow withdrawal of a plea is solely
6 within the discretion of the district court.” *Id.*

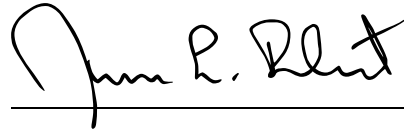
7 Mr. Andre argues that, after the Supreme Court’s decision in *Gundy v. United*
8 *States*, --- U.S. ---, 139 S. Ct. 2116 (2019), “there still exists a viable question about
9 whether charging pre-[Sex Offender Registration and Notification Act (‘SORNA’)] sex
10 offenders under 18 U.S.C. § 2250 violates Article I, Section I of the United States
11 Constitution and the non-delegation doctrine” (Mot. at 1-2); *see also* 34 U.S.C.
12 § 20913(a). According to Mr. Andre, withdrawal of his guilty plea is warranted because
13 *Gundy*, which was not decided by the full Court, “leaves open the possibility that a
14 majority of the Court will reconsider the constitutionality of SORNA’s delegation clause
15 at some point in the foreseeable future” (Mot. at 8-9.) Relatedly, Mr. Andre argues
16 that, before *Gundy*, “[he] had no legal precedent to rely on to challenge SORNA’s
17 delegation clause,” and he should now be allowed to withdraw his guilty plea and assert a
18 constitutional challenge to that provision. (*Id.* at 9.)

19 The court finds Mr. Andre’s argument that the Supreme Court may reconsider
20 *Gundy* to be speculative and insufficient to establish a fair and just reason for withdrawal
21 of his guilty plea. (*See id.* at 7-9.) The court further concludes that Mr. Andre could
22 have, but did not, challenge SORNA’s delegation clause before *Gundy* was decided. Mr.

1 Andre therefore fails to carry his burden to show a fair and just reason for withdrawal of
2 his plea. *See Nostratis*, 321 F.3d at 1208.

3 For the foregoing reasons, the court DENIES the motion (Dkt. # 42).

4 Dated this 15th day of August, 2019.

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8 The Honorable James L. Robart
9 U.S. District Court Judge
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